

REMARKS/ARGUMENTS

Claims 113-120, 122, 124-125, 132-139, 141, 143-144 and 152 have been canceled.

Claims 112, 131, 145 and 151 have been amended to remove reference to percent identity.

Claims 112, 131, and 151 have also been amended so that a “pair of BAAV inverted terminal repeats” has been replaced with “a nucleotide sequence comprising SEQ ID NO:12”. Support for such an amendment can be found, for example, in previous claim 119.

Claim 131 has also been amended to clarify the language of the claim.

Claims 123 and 142 have been amended to correct the dependency of the selected nucleic acid sequence.

Accordingly, Applicants submit that no new matter has been entered into the specification.

I. Election/Restriction

The Examiner states that claims 141-144 remain drawn to non-elected subject matter. Specifically, the Examiner states that independent claim 131 requires “two vectors”, and there is no limitation requiring the second vector to be vector number two of the claim. The Examiner suggests amending the claim so that the “second vector” is the second of the two vectors recited in line 1.

Claims 141 and 143-144 have been canceled rendering issues with these claims moot. Further, Claim 131 has been amended so that the second vector is denoted as being one of “the at least two vectors”. Thus, the claims are drawn to elected subject matter.

II. Claim Objections

The Examiner has objected to claims 131 and 151, stating that they recite non-elected subject matter. Specifically, the Examiner states that, as currently worded, the claims do not require either of the elected components of the invention, i.e. parts (a) and (b). The Examiner

suggests that if Applicants would like to include the subject matter of claim 151 (c), the scope of claim 145 should be used. That is, the conjunction “and” should appear between the required components, and the Markush language should be removed from lines 2-3.

Claim 131 has been amended so that the claimed system comprises first and second vectors. The first vector encodes a disclosed CAP or REP protein. The second vector comprises the disclosed BAAV ITR sequence. Claim 151 has been amended so that the system comprises a vector comprising the BAAV ITR sequence and a sequence encoding the REP or CAP protein. In view of these amendments, Applicants contend that claims are drawn to elected subject matter.

With regard to the typographical errors in claim 122 noted by the Examiner, claim 122 has been canceled rendering the objection of this claim moot.

III. Rejections under 35 U.S.C. §102

The Examiner has rejected claim 151 as being anticipated by Arbetman et al. (US 7,259,151). Specifically, the Examiner states that Arbetman et al. discloses a protein (SEQ ID NO:26) that is 99% identical to present SEQ ID NO:11.

Claim 151 has been amended so that the encoded protein is selected from the group consisting of SEQ ID NO:3, SEQ ID NO:5, SEQ ID NO:7, SEQ ID NO:9, and SEQ ID NO:11. Arbetman et al. does not disclose any of these proteins. Thus, the present claims are novel over Arbetman et al.

IV. Rejections under 35 USC 112, first paragraph –enablement

The Examiner has rejected claims 112-118, 120, 122, 126-140, and 145-151, for lack of enablement. Specifically, the Examiner states that while the specification is enabling for compositions comprising the BAAV ITR and capsid protein set forth in SEQ ID NO's 12 and 10, respectively, it does not enable other BAAV ITRs, capsid proteins, or variants thereof.

The claims have been amended to remove all reference to percent identity. Moreover, reference to a BAAV ITR has been replaced with SEQ ID NO:12. Thus, the claims are limited to only those sequences disclosed in the specification, which the Examiner has acknowledged are enabled.

V. Rejections under 35 USC 112, first paragraph – written description

The Examiner has rejected claims 112-118, 120, 126-140, and 145-150 for lack of written description. Specifically, the Examiner states that the claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the art that the inventors(s) had possession of the claimed invention at the time the application was filed.

The claims have been amended to remove all reference to percent identity. Moreover, reference to a BAAV ITR has been replaced with SEQ ID NO:12. Thus, the claims are limited to only those sequences disclosed in the specification.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in a condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested. Applicants do not acquiesce to any objection, rejection, or argument not specifically addressed herein. Rather, the Applicants believe the amendments and arguments contained herein overcome all objections, rejections, or arguments.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at (303) 863-9700.

The Commissioner is hereby authorized to charge to deposit account number 19-1970 any fees under 37 CFR § 1.16 and 1.17 that may be required by this paper and to credit any overpayment to that Account. If any extension of time is required in connection with the filing of this paper and has not been separately requested, such extension is hereby petitioned.

Respectfully submitted,
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